

CIVIL REVISION APPLICATION NO. 446 OF 1996.

Date of decision: 3.2.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Miss N.V. Parmar, advocate for petitioner.

Miss Mamat R. Vyas, advocate for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain,J.

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February 3, 1997.

Oral judgment:

Heard learned advocates.

Petitioner/ original defendant No.1 has preferred this revision application aggrieved by the order of the learned Assistant Judge, Porbandar passed in Civil Misc. Application No.4 of 1995 on 13.2.1996 vide which request to condone delay in preferring the appeal against the judgment and order dated 29.10.1994 passed by the learned Civil Judge (S.D.), Porbandar was rejected. On perusal of record it appears that there is delay of 15 days in preferring the appeal.

The petitioner is a statutory body, managed by bureaucrats. It is stated in the application that the District Development Officer who was responsible for taking decision in the matter was on tour visiting different places on account of administrative exigencies as a result of which was not able to take appropriate decision within stipulated period and thus delay has been caused. It is true that in so many words the ground has not been explained but this ground has been pleaded clearly. A judicial notice can be taken that administrative officers like D.D.O. being in-charge of statutory body has to visit so many places within the territorial jurisdiction of that statutory body keeping in mind administrative exigencies and must have visited whereby it might have escaped his mind. The delay of 15 days is not inordinate and is condonable in light of the ground canvassed. Miss Vyas for the respondents has vehemently argued that delay of each and every day should have been explained and in absence of such explanation shall not be condoned taking liberal view. It is true that delay has to be explained and the explanations should be satisfactory and plausible. As stated above, in this application the delay has not been explained in so many words but at the same time the ground has been canvassed. It is sufficient and satisfactory. In view of this fact, the court below ought to have taken little practical approach as ultimate aim is to do justice on merits and not to defeat the object on technical grounds.

In any case, the facts remain that the petitioner-Panchayat has been negligent to some extent and has not explained the delay in its proper perspective. It is only because of improper explanation of delay the respondents have been caused to face this litigation entailing legal expenses at both levels i.e., at the lower appellate court as well as High Court for no fault of them consequently, while condoning delay the petitioner is required to be saddled with cost.

In the result, application is allowed. The impugned order dated 13.2.1996 passed in Civil Misc. Application No.4 of 1995 by the learned Assistant Judge, Porbandar is hereby quashed and set aside. Delay stands condoned on condition that the petitioner shall pay to the respondents Rs.1,000/- as costs within four weeks from today. Rule made absolute.